IN THE

Supreme Court of the United States.

OCTOBER TERM, 1948.

No. 186. Misc.

ALBERT J. PALARDY,

Petitioner,

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR LEAVE TO SUBMIT BRIEF.

MAY IT PLEASE THE COURT:

The International Longshoremen's Association, affiliated with the American Federation of Labor, respectfully requests this Court to grant permission to file and receive the annexed brief in connection with the above entitled matter.

This Association represents approximately 80,000 longshoremen whose duties involve loading and discharging cargo, repairing, refitting and otherwise working on or about the vessels of the American Merchant Marine. The issue involved in this case will very materially affect the rights of all of the members of this Union and because of these considerations, special leave is respectfully sought to present the attached memorandum in support of the Petition for the Writ of Certiorari and the brief in support thereof.

In advance of this petition, Mr. Abraham E. Freedman, counsel for the petitioner, and Mr. Thomas E. Byrne, Jr., counsel for respondent, have expressed their consent to the filing of the brief as amicus curiae.

ABRAHAM M. FISCH,
Attorney for Petitioner.

BRIEF OF AMICUS CURIAE.

The instant case was decided upon a grossly erroneous interpretation of the decision in *Caldarola v. Eckert,* 332 U. S. 155, which case was intended to be limited to the particular facts involved therein. To adopt the decision of the Court of Appeals in the instant case would, in effect, incorporate the common law of the State of New York into the Maritime Law in all actions, whether they be brought in the Federal or courts of any State. This Court in the *Caldarola* case specifically refrained from passing upon the liability of the General Agent under the Federal law and considered itself foreclosed upon that point by the decision of the New York Court of Appeals.

In the *Caldarola* case, this Court did not have the benefit of the delivery certificates and the Government there argued that there was never any delivery of the vessel, notwithstanding the actual facts as indicated by the certificates in possession of the Government at that time.

In the *Caldarola* case also the Government alleged a number of facts which are absolutely contradicted by competent evidence properly proven in other cases. The Government has never made any move to substantiate or prove any of those statements which are so palpably untrue. In addition to the delivery certificates which were suppressed by the Government and the respondents in the *Caldarola* case and other facts as are related in the Petition for the Writ of Certiorari and supporting brief, there is still further evidence of which the Government was aware but did not bring to the attention of the Court in the *Caldarola* case. It is contended by the Government that the authority of the General Agent stopped at the "water's edge". Not only is this statement refuted by an examination of the General Agency Agreement itself and the operations regu-

lations which were promulgated by the War Shipping Administration, but it is squarely contradicted also by the very statements which were made by the General Agent to the Insurance Companies in covering their liability against such risks as is involved in the case at bar. In the case of *Wright v. Eastern Steamship Company*, decided by the District Court for the Southern District of New York (Admiralty #152), the record shows the following:

"Eastern Steamship Lines, Inc.,
40 Central Street,
Boston, Mass.

Re: Primary Commercial Blanket Bond
No. S-50,223

Gentlemen:

This is to advise you as Insured under Primary Commercial Blanket Bond No. S-50,223, issued by this Company in your favor and dated the 31st day of December, 1945, that the words 'Employee' or 'Employees' as defined in the said bond shall be deemed to include the Captains and Crews of ships owned by the United States of America and operated by you under a Service Agreement with the War Shipping Administration.

Very truly yours,

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA

By .....
Resident Vice President"

Here is concrete and specific evidence which not only disproves the Government's statement of facts, but which indicates a lack of candor and frankness on the part of the Government in its statements to this Court in the *Caldarola* case. Suffice it to say that both the United States and the

General Agents recognize that the personnel on the vessels would be considered, in point of fact, as the employees of the General Agent and that the latter would be responsible for all torts committed by any of the personnel of the vessels against longshoremen or other third persons. And it was against that very type of liability which the insurance policy was intended to protect the General Agent.

For these reasons and for the considerations which are set forth in the brief of the petitioner in the application for the Writ of Certiorari, all of which considerations this Association fully endorses, it is respectfully urged that your Honorable Court grant the Writ of Certiorari to the end that the decision of the Court of Appeals below should be reversed.

Respectfully submitted,

ABRAHAM M. FISCH,
Attorney for International Longshoremen's Association as Amicus Curiae.